

106TH CONGRESS
2D SESSION

S. 2580

To provide for the issuance of bonds to provide funding for the construction of schools of the Bureau of Indian Affairs of the Department of the Interior, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 17, 2000

Mr. JOHNSON (for himself, Mr. BINGAMAN, Mr. DASCHLE, and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To provide for the issuance of bonds to provide funding for the construction of schools of the Bureau of Indian Affairs of the Department of the Interior, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Indian School Con-
5 struction Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) BUREAU.—The term “Bureau” means the
2 Bureau of Indian Affairs of the Department of the
3 Interior.

4 (2) INDIAN.—The term “Indian” means any in-
5 dividual who is a member of a tribe.

6 (3) SECRETARY.—The term “Secretary” means
7 the Secretary of the Interior.

8 (4) TRIBAL SCHOOL.—The term “tribal school”
9 means an elementary school, secondary school, or
10 dormitory that is operated by a tribal organization
11 for the education of Indian children and that re-
12 ceives financial assistance for its operation under a
13 contract, grant, or agreement with the Bureau under
14 section 102, 103(a), or 208 of the Indian Self-Deter-
15 mination and Education Assistance Act (25 U.S.C.
16 450f, 450h(a), and 458d).

17 (5) TRIBE.—The term “tribe” means any In-
18 dian tribe, band, nation, or other organized group or
19 community, including a Native village, Regional Cor-
20 poration, or Village Corporation (as defined in or es-
21 tablished pursuant to the Alaska Native Claims Set-
22 tlement Act), that is recognized as eligible for the
23 special programs and services provided by the
24 United States to Indians because of their status as
25 Indians.

1 **SEC. 3. ISSUANCE OF BONDS.**

2 (a) IN GENERAL.—The Secretary shall establish a
3 pilot program under which eligible tribes have the author-
4 ity to issue tribal school modernization bonds to provide
5 funding for the improvement, repair, and new construction
6 of tribal schools.

7 (b) ELIGIBILITY.—

8 (1) IN GENERAL.—To be eligible to issue bonds
9 under the program under subsection (a), a tribe
10 shall prepare and submit to the Secretary a plan of
11 construction that meets the requirements of para-
12 graph (2).

13 (2) PLAN OF CONSTRUCTION.—A plan of con-
14 struction meets the requirements of this paragraph
15 if such plan—

16 (A) contains a description of the improve-
17 ments, repairs, or new construction to be un-
18 dertaken with funding provided under the bond;

19 (B) demonstrates that a comprehensive
20 survey has been undertaken concerning the con-
21 struction or renovation needs of the tribal
22 school involved;

23 (C) contains assurances that funding
24 under the bond will be used only for the activi-
25 ties described in the plan; and

1 (D) contains any other reasonable and re-
2 lated information determined appropriate by the
3 Secretary.

4 (3) PRIORITY.—In determining whether a tribe
5 is eligible to participate in the program under this
6 section, the Secretary shall give priority to tribes
7 that, as demonstrated by the relevant plans of con-
8 struction, will fund projects described in the Re-
9 placement School Construction priority list of the
10 Bureau of Indian Affairs, as maintained under the
11 Indian Self-Determination and Education Assistance
12 Act.

13 (4) APPROVAL.—Except as provided in para-
14 graph (3), the Secretary shall approve the issuance
15 of qualified tribal school modernization bonds by
16 tribes with approved plans of construction on the
17 basis of the order in which such plans were received
18 by the Secretary. Such approval shall not be unrea-
19 sonably withheld.

20 (c) PERMISSIBLE ACTIVITIES.—In addition to the
21 use of funds permitted under subsection (a), a tribe may
22 use amounts received through the issuance of a bond to—

23 (1) enter into contracts with architects, engi-
24 neers, and construction firms in order to determine

1 the needs of the tribal school and for the design and
 2 engineering of the school;

3 (2) enter into contracts with financial advisors,
 4 underwriters, attorneys, trustees, and other profes-
 5 sionals who would be able to provide assistance to
 6 the tribe in issuing bonds; and

7 (3) carry out other activities determined appro-
 8 priate by the Secretary.

9 (d) BOND TRUSTEE.—

10 (1) IN GENERAL.—Notwithstanding any other
 11 provision of law, any tribal school construction bond
 12 issued by a tribe under this section shall be subject
 13 to a trust agreement between the tribe and a trust-
 14 ee.

15 (2) TRUSTEE.—Any bank or trust company
 16 that meets requirements established by the Secretary
 17 by regulation may be designated as a trustee under
 18 paragraph (1).

19 (3) CONTENT OF TRUST AGREEMENT.—A trust
 20 agreement entered into by a tribe under this sub-
 21 section shall specify that the trustee, with respect to
 22 bonds issued under this section shall—

23 (A) act as a repository for the proceeds of
 24 the bond;

25 (B) make payments to bondholders;

(C) from any amounts in excess of the amounts necessary to make payments to bondholders, in accordance with the requirements of paragraph (4), make direct payments to contractors with the governing body of the tribe for facility improvement, repair, or new construction pursuant to this section; and

(D) invest in the tribal school modernization escrow account established under subsection (f)(2) such amounts of the proceeds as the trustee determines not to be necessary to make payments under subparagraphs (B) and (C).

(4) REQUIREMENTS FOR MAKING DIRECT PAYMENTS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, only the trustee shall make the direct payments referred to in paragraph (3)(C) in accordance with requirements that the tribe shall prescribe in the agreement entered into under paragraph (3). The tribe shall require the trustee, prior to making a payment to a contractor under paragraph (3)(C), to inspect the project that is the subject of the contract, or provide for an inspection of that

1 project by a local financial institution, to ensure
2 the completion of the project.

3 (B) CONTRACTS.—Each contract referred
4 to in paragraph (3)(C) shall specify, or be re-
5 negotiated to specify, that payments under the
6 contract shall be made in accordance with this
7 subsection.

8 (e) PAYMENTS OF PRINCIPAL AND INTEREST.—

9 (1) PRINCIPAL.—Qualified tribal school mod-
10 ernization bonds shall be issued under this section as
11 interest only for a period of 15 years from the date
12 of issuance. Upon the expiration of such 15-year pe-
13 riod, the entire outstanding principal under the bond
14 shall become due and payable.

15 (2) INTEREST.—Interest on a qualified tribal
16 school modernization bond shall be in the form of a
17 tax credit under section 1400F of the Internal Rev-
18 enue Code of 1986.

19 (f) BOND GUARANTEES.—

20 (1) IN GENERAL.—Payment of the principal
21 portion of a qualified tribal school modernization
22 bond issued under this section shall be guaranteed
23 by amounts deposited in the tribal school moderniza-
24 tion escrow account established under paragraph
25 (2).

1 (2) ESTABLISHMENT OF ACCOUNT.—

2 (A) IN GENERAL.—Notwithstanding any
 3 other provision of law, subject to the availability
 4 of amounts made available under an appropria-
 5 tions Act, beginning in fiscal year 2001, the
 6 Secretary may deposit not more than
 7 \$30,000,000 of unobligated funds into a tribal
 8 school modernization escrow account.

9 (B) PAYMENTS.—The Secretary shall use
 10 any amounts deposited in the escrow account
 11 under subparagraph (A) and subsection
 12 (d)(3)(D) to make payments to holders of quali-
 13 fied tribal school modernization bonds issued
 14 under this section.

15 (g) LIMITATIONS.—

16 (1) OBLIGATION OF TRIBES.—Notwithstanding
 17 any other provision of law, a tribe that issues a
 18 qualified tribal school modernization bond under this
 19 section shall not be obligated to repay the principal
 20 on the bond.

21 (2) LAND AND FACILITIES.—Any land or facili-
 22 ties purchased or improved with amounts derived
 23 from qualified tribal school modernization bonds
 24 issued under this section shall not be mortgaged or
 25 used as collateral for such bonds.

1 **SEC. 4. EXPANSION OF INCENTIVES FOR TRIBAL SCHOOLS.**

2 Chapter 1 of the Internal Revenue Code of 1986 is
3 amended by adding at the end the following new sub-
4 chapter:

5 **“Subchapter X—Tribal School Modernization**
6 **Provisions**

“Sec. 1400F. Credit to holders of qualified tribal school modernization bonds.

7 **“SEC. 1400F. CREDIT TO HOLDERS OF QUALIFIED TRIBAL**
8 **SCHOOL MODERNIZATION BONDS.**

9 “(a) ALLOWANCE OF CREDIT.—In the case of a tax-
10 payer who holds a qualified tribal school modernization
11 bond on a credit allowance date of such bond which occurs
12 during the taxable year, there shall be allowed as a credit
13 against the tax imposed by this chapter for such taxable
14 year an amount equal to the sum of the credits determined
15 under subsection (b) with respect to credit allowance dates
16 during such year on which the taxpayer holds such bond.

17 “(b) AMOUNT OF CREDIT.—

18 “(1) IN GENERAL.—The amount of the credit
19 determined under this subsection with respect to any
20 credit allowance date for a qualified tribal school
21 modernization bond is 25 percent of the annual
22 credit determined with respect to such bond.

23 “(2) ANNUAL CREDIT.—The annual credit de-
24 termined with respect to any qualified tribal school
25 modernization bond is the product of—

1 “(A) the applicable credit rate, multiplied
2 by

3 “(B) the outstanding face amount of the
4 bond.

5 “(3) APPLICABLE CREDIT RATE.—For purposes
6 of paragraph (1), the applicable credit rate with re-
7 spect to an issue is the rate equal to an average
8 market yield (as of the day before the date of
9 issuance of the issue) on outstanding long-term cor-
10 porate debt obligations (determined under regula-
11 tions prescribed by the Secretary).

12 “(4) SPECIAL RULE FOR ISSUANCE AND RE-
13 DEMPTION.—In the case of a bond which is issued
14 during the 3-month period ending on a credit allow-
15 ance date, the amount of the credit determined
16 under this subsection with respect to such credit al-
17 lowance date shall be a ratable portion of the credit
18 otherwise determined based on the portion of the 3-
19 month period during which the bond is outstanding.
20 A similar rule shall apply when the bond is re-
21 deemed.

22 “(c) LIMITATION BASED ON AMOUNT OF TAX.—

23 “(1) IN GENERAL.—The credit allowed under
24 subsection (a) for any taxable year shall not exceed
25 the excess of—

1 “(A) the sum of the regular tax liability
 2 (as defined in section 26(b)) plus the tax im-
 3 posed by section 55, over

4 “(B) the sum of the credits allowable
 5 under part IV of subchapter A (other than sub-
 6 part C thereof, relating to refundable credits).

7 “(2) CARRYOVER OF UNUSED CREDIT.—If the
 8 credit allowable under subsection (a) exceeds the
 9 limitation imposed by paragraph (1) for such taxable
 10 year, such excess shall be carried to the succeeding
 11 taxable year and added to the credit allowable under
 12 subsection (a) for such taxable year.

13 “(d) QUALIFIED TRIBAL SCHOOL MODERNIZATION
 14 BOND; OTHER DEFINITIONS.—For purposes of this
 15 section—

16 “(1) QUALIFIED TRIBAL SCHOOL MODERNIZA-
 17 TION BOND.—

18 “(A) IN GENERAL.—The term ‘qualified
 19 school modernization bond’ means, subject to
 20 subparagraph (B), any bond issued as part of
 21 an issue under section 3 of the Indian School
 22 Construction Act if—

23 “(i) 95 percent or more of the pro-
 24 ceeds of such issue are to be used for the
 25 construction, rehabilitation, or repair of a

tribal school facility or for the acquisition
of land on which such a facility is to be
constructed with part of the proceeds of
such issue,

“(ii) the bond is issued by an Indian
tribe,

“(iii) the issuer designates such bond
for purposes of this section, and

“(iv) the term of each bond which is
part of such issue does not exceed 15
years.

“(B) NATIONAL LIMITATION ON AMOUNT
OF BONDS DESIGNATED.—There is a national
qualified tribal school modernization bond limi-
tation for each calendar year. Such limitation
is—

“(i) \$200,000,000 for 2001,

“(ii) \$200,000,000 for 2002, and

“(iii) zero after 2002.

“(2) CREDIT ALLOWANCE DATE.—The term
‘credit allowance date’ means—

“(A) March 15,

“(B) June 15,

“(C) September 15, and

“(D) December 15.

1 Such term includes the last day on which the bond
2 is outstanding.

3 “(3) BOND.—The term ‘bond’ includes any ob-
4 ligation.

5 “(4) TRIBE.—The term ‘tribe’ has the meaning
6 given such term by section 2 of the Indian School
7 Construction Act.

8 “(e) CREDIT INCLUDED IN GROSS INCOME.—Gross
9 income includes the amount of the credit allowed to the
10 taxpayer under this section (determined without regard to
11 subsection (c)) and the amount so included shall be treat-
12 ed as interest income.

13 “(f) BONDS HELD BY REGULATED INVESTMENT
14 COMPANIES.—If any qualified tribal school modernization
15 bond is held by a regulated investment company, the credit
16 determined under subsection (a) shall be allowed to share-
17 holders of such company under procedures prescribed by
18 the Secretary.

19 “(g) CREDITS MAY BE STRIPPED.—Under regula-
20 tions prescribed by the Secretary—

21 “(1) IN GENERAL.—There may be a separation
22 (including at issuance) of the ownership of a quali-
23 fied tribal school modernization bond and the entitle-
24 ment to the credit under this section with respect to
25 such bond. In case of any such separation, the credit

1 under this section shall be allowed to the person who
2 on the credit allowance date holds the instrument ev-
3 idencing the entitlement to the credit and not to the
4 holder of the bond.

5 “(2) CERTAIN RULES TO APPLY.—In the case
6 of a separation described in paragraph (1), the rules
7 of section 1286 shall apply to the qualified tribal
8 school modernization bond as if it were a stripped
9 bond and to the credit under this section as if it
10 were a stripped coupon.

11 “(h) TREATMENT FOR ESTIMATED TAX PUR-
12 POSES.—Solely for purposes of sections 6654 and 6655,
13 the credit allowed by this section to a taxpayer by reason
14 of holding a qualified tribal school modernization bonds
15 on a credit allowance date shall be treated as if it were
16 a payment of estimated tax made by the taxpayer on such
17 date.

18 “(i) CREDIT MAY BE TRANSFERRED.—Nothing in
19 any law or rule of law shall be construed to limit the trans-
20 ferability of the credit allowed by this section through sale
21 and repurchase agreements.

22 “(j) CREDIT TREATED AS ALLOWED UNDER PART
23 IV OF SUBCHAPTER A.—For purposes of subtitle F, the
24 credit allowed by this section shall be treated as a credit
25 allowable under part IV of subchapter A of this chapter.

1 “(k) REPORTING.—Issuers of qualified tribal school
2 modernization bonds shall submit reports similar to the
3 reports required under section 149(e).”.

4 **SEC. 5. SOVEREIGN IMMUNITY.**

5 This Act and the amendments made by this Act shall
6 not be construed to impact, limit, or affect the sovereign
7 immunity of the Federal Government or any State or trib-
8 al government.

